



The
Department of the Air Force
General Counsel

**Pre- and Post- Employment Restrictions
For
Separating and Retiring
Air Force Personnel**

**THE AIR FORCE ETHICS OFFICE
SAF/GCA**

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**GCA provides post-employment seminars for HAF and SAF employees. Please
Call 703-693-0417 to schedule a briefing.**

**(Recommended for military officers/civilians considering defense related employment in
the private sector).**

AF personnel assigned to 11/WG or AFDW should contact 11WG/JA or AFDW/JA (see p. 2).

Pre- & Post-Employment Restrictions for Separating & Retiring Air Force Personnel

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Pre- & Post-Employment Restrictions for Separating & Retiring Air Force Personnel

I. Introduction

A number of ethical issues may arise while current Air Force military members and civilian employees are seeking or have found post-Government employment, particularly when they are seeking positions with defense contractors. As a result, laws and regulations place limitations on the pre-and post-employment activities of separating or retiring military members and civilian employees. The main sources of these limitations are Federal statutes (including criminal penalties), Office of Government Ethics (OGE) regulations, and the Joint Ethics Regulation (JER), DoD 5500.07-R.

This handout first discusses the regulations on post-Government employment that are applicable to ALL Air Force personnel, both civilian and military. The subsequent sections then discuss specific rules that apply for individuals falling into the following personnel categories (individuals may fall into more than one category):

- Senior Government Employees (General Officers, SES members, etc.)
- Non-Career Political Employees
- Retired Military Members
- Personnel involved in Contracting/Procurement Activities (all personnel with access to procurement information should reference this section)

The **restrictions placed on individuals in the specialized personnel categories are cumulative**, meaning that individuals must comply with the limitations applicable to all Air Force Personnel as well as those contained in each of the applicable personnel categories.

This handout is for general guidance only and is not to be cited as legal authority or relied upon as legal advice. Therefore, before you make any decisions that might affect your present or future endeavors, be sure that you have an accurate understanding of the law from a reliable source.

Also, keep in mind that Air Force ethics counselors represent the interests of the Air Force — they do not represent you as an individual. Legal counseling on standards of conduct is not “legal assistance.” This means that the normal confidentiality afforded a person who consults with an attorney does not apply to discussions on pre- and post-employment. Finally, **if you need one-on-one counseling, it is important that you contact the appropriate ethics counselor.**

Contact information for post-Government employment advice:

Air Force personnel assigned to the Air Staff or Secretariat, contact: **SAF/GCA**

Pentagon, Room 4C934
Washington, DC 20330-1740
(703) 693-0417

Air Force personnel assigned to the 11th Wing, contact: **11WG/JA**

1500 W. Perimeter Road, Suite 2110
Joint Base Andrews, MD 20762
(240) 612-5750 / DSN 612-5750

Air Force personnel assigned to AFDW, contact: **AFDW/JA**

1500 W. Perimeter Road, Suite 5770
Joint Base Andrews, MD 20762
(240) 612-6091 / DSN 612-6091

II. All Air Force Members and Employees

A. Pre-Separation Rules

i. Use of Government Resources in Job-Seeking

You may not use Government resources when conducting your job searches. The Joint Ethics Regulation (JER) and Government-wide regulations prohibit the use of Government property, official time, and the services of subordinates for other than authorized purposes.

All of the following are examples of *misuse* of Government resources:

- Using an office computer during duty hours to prepare a resume;
- Asking support staff to type resumes or cover letters;
- Using an office telephone to make long-distance telephone calls to prospective employers.

Limited, reasonable uses of Government equipment may be authorized by your supervisor or commander. For example, Government e-mail may be used during personal time for job searching with the permission of your supervisor. AF Manual 33-152, para. 3.1.3.6.

Do not assume that use is reasonable or authorized unless you clear it *in advance*.

ii. Conflicts of Interest When Seeking Post-Government Employment

In most cases, Air Force personnel (officer, enlisted, or civilian) are permitted to actively pursue future employment opportunities while still on active duty or employed by the Air Force. However, seeking post-Government employment with certain employers **may create a conflict of interest** if your official duties involve making decisions or giving advice that could have some impact on the same entities with which you are seeking employment. If you are seeking or negotiating for future employment, you must:

- Ensure that the prospect of employment does not affect the performance or non-performance of your official duties;
- Ensure that you do not communicate “inside” or privileged information to a prospective employer; *and*
- Avoid any activity that would affect the public’s confidence in the integrity of the Federal Government, even if such activity is not an actual violation of the law.

Disqualification:

Simplified Rule: Once you have started *seeking employment* with a prospective employer, you may not take any official action that will affect the financial interests of that prospective employer. To avoid triggering a conflict of interest while conducting your job search, it may become necessary for you to formally **disqualify yourself in writing** from working on official matters involving a prospective employer.

Executive branch officers and employees, to include Air Force personnel in any career field or occupation (this includes enlisted personnel), **must** disqualify themselves from

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particular matters that will have *direct and predictable effects* on the financial interests of prospective employers. Failure to properly disqualify yourself in this context may result in criminal prosecution under Federal statute 18 U.S.C. §208.

Disqualification is accomplished by not participating in particular matters with the entity in question. However, under the JER, **DoD employees must also provide written notice of their disqualification to their supervisor or commander. A sample disqualification letter that satisfies this requirement is provided as Attachment 1.** Disqualification may be refused and is ultimately at the discretion of the employee's supervisor. Completing a written disqualification letter listing prospective employers is often considered to be a "best practice" even when you do not have official duties that could impact the interests of those prospective employers.

The need to **disqualify** yourself arises when you begin "**seeking employment**" with a specific prospective employer that may trigger a conflict of interest.

"Seeking employment" includes:

- *Conducting mutual negotiation discussions or communications* with a view toward reaching an agreement regarding possible employment regardless of whether or not specific terms and conditions of employment are discussed;
- *Making unsolicited communications regarding possible employment*, including sending a resume (but merely requesting a job application does not require disqualification unless a job application is submitted); and
- *Receiving an unsolicited communication regarding possible employment without rejecting it.*

Note: *Deferring* a discussion or decision regarding a particular employer is not equivalent to *rejecting* employment – Deferring employment means that you are still seeking employment and, therefore, the disqualification requirement applies.

Many people identify job opportunities by "networking" with acquaintances who work at civilian firms or companies they deal with in the course of their official Air Force duties. This is permissible, except that once you begin "seeking employment" (as defined above) with particular persons or companies; you are precluded from participating in an official capacity in any matter that might affect the financial interests of such persons or companies.

Disqualification is accomplished by not participating in particular matters with the entity in question. However, under the JER, DoD employees must also provide written notice of their disqualification to their supervisor or commander. Disqualification may be refused and is ultimately at the discretion of the employee's supervisor. You are no longer "seeking employment" when: you reject the possibility of employment and all discussions terminate, or when two months have elapsed after sending a resume or employment proposal to a potential employer without response.

You may accept travel expenses (meals, lodging, transportation) from a prospective employer if they are customarily provided in connection with bona fide employment discussions. If the performance of your official duties could affect a prospective employer, you must first be

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disqualified from acting on those matters. Financial disclosure filers (OGE 450 or 278e) must report gifts in excess of \$375 on their annual reports.

See **Attachment 1** for a **Template Disqualification Statement** and further details on how to properly fulfill the disqualification and notice requirements.

Note: Senior Personnel (General Officers and SES) have an additional notice and recusal requirement under the STOCK Act, which is discussed in Section III and Attachment 2.

iii. Terminal Leave (Military Personnel)

Simplified Rule: Military personnel may accept outside employment and begin working while on terminal leave, subject to the standard restrictions concerning off-duty employment by active-duty service members. One key restriction to consider is that personnel on terminal leave may not represent their non-Federal employers back to any aspect of the Federal Government in most situations and may not work in a Federal workplace as contractor until after their retirement/separation date.

If you are an Air Force service member on terminal leave you may accept a civilian position with the Federal Government. You are permitted to accept the pay and accrue annual leave for that civilian position in addition to the pay and allowances from the Air Force for the duration of their terminal leave. 5 U.S.C. §5534(a). Note: Please see the “Retired Military” section on p. 15 for further discussion on the 180-day rule for retired military members transitioning to a civil service position.

Requirements for Preapproval for Off-Duty Employment:

Generally, you are required to obtain permission to engage in off-duty employment, including while on terminal leave. However, the specific scope of this requirement varies among Air Force commands.

At a minimum, all Air Force commands require ***financial disclosure filers*** (OGE form 278 or OGE form 450) on terminal leave to obtain permission to engage in off-duty employment with a ***prohibited source***. JER paragraph 2-206. (This requirement does not apply to Special Government Employees, SGE’s).

“Prohibited source” means any person or organization who:

- Is seeking official action by the employee's agency;
- Does business or seeks to do business with the employee's agency;
- Conducts activities regulated by the employee's agency;
- Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or
- Is an organization a majority of whose members fall into one of the above categories.

However, some Air Force commands have more stringent preapproval requirements for off-duty employment. For example, some commands and bases require **all** of their military and civilian personnel to submit a written request for approval for **any** off-duty employment, including self-employment (ex: Air Force Space Command). **Before engaging in**

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any off-duty employment, consult your local ethics official to determine whether you need to request approval. Where it is required, request and approval should be accomplished in writing, via the **AF Form 3902**.

Restriction on Representing Others to the Federal Government:

If you are a military officer engaged in off-duty employment while on terminal leave you are prohibited by 18 U.S.C. §205 and 18 U.S.C. §203 (criminal statutes) from representing a non-Federal employer or any other third party back to the Government. Note: This restriction does not apply to enlisted service members.

If you are a military officer on terminal leave, this restriction does not prevent you from working for contractors. However, it limits the activities they you perform for the contractor for the duration of the terminal leave to only "behind the scenes" work at the contractor's offices or otherwise away from the Government workplace. In almost every case, this prohibition precludes you from interacting or appearing in the Federal workplace as a contractor because being present in Government offices on behalf of a contractor is inherently a representation.

Note: While 18 U.S.C. §205 and 18 U.S.C. §203 apply only for the duration of terminal leave, other limitations on representation of non-Federal employers to the Government continue into the post-separation context.

B. Post-Separation Rules

When a former Government employee decides to act as the representative for another person on the same matter they handled as a Government employee, the "switching of sides" undermines the public's confidence in the fairness of Government proceedings and creates the impression that personal influence gained by Government affiliation is being used as an undue advantage.

To prevent abuses of influence or perceptions of abuse, 18 U.S.C. §207 (criminal statute) places representational restrictions on activities you can perform for subsequent non-Federal employers. However, the 18 U.S.C. §207 representational restrictions do not bar you, regardless of grade or position, from accepting employment with any private or public employer after your Government service ends. In other words, **the statute does not limit *who* you work for, but it may limit *what you do for them*.**

The following three 18 U.S.C. §207 restrictions apply to **all military officers and civilian employees (but not to enlisted personnel)**:

i. Lifetime Ban

Simplified Rule: After you leave Government service, you may not represent someone else to the Government regarding particular matters that you worked on while in Government service.

As a former Federal employee you may not make, with the ***intent to influence***, any ***communication to or appearance before an employee of the United States*** on behalf of any other person in a ***particular matter*** involving a ***specific party*** in which the employee ***participated***

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personally and substantially as *an employee*, and in which the *United States is a party or has a direct and substantial interest*. 18 U.S.C. §207 (a)(1) (criminal statute). This is called a “lifetime ban” because the restriction lasts for the life of the relevant particular matter.

For this restriction to apply each of the key elements must be present:

☐ ***Intent to influence***

The intent to influence element is met when the communication is made with the purpose of: seeking a Government ruling, benefit, approval, or other discretionary Government action; or affecting Government action involving actual or potential dispute or controversy. Therefore, this ban does **not** apply to communications involving purely social interaction, requests for publicly available documents, or requests for factual information.

☐ ***Communication to or appearance before an employee of the United States*** on behalf of any other person

This ban covers any appearance before or communication to any employee of any department, agency, court, or courts-martial of the United States.

Note: this restriction applies only to representations back to the Government. Therefore, this ban does not prohibit a former employee from providing “behind-the-scenes assistance” to their non-Federal employer where there is no communication to or an appearance before an employee of the United States.

☐ Involving a ***particular matter***

“Particular matter” includes any:

- | | |
|--|--------------------------------|
| ▪ investigation, | ▪ controversy, |
| ▪ application, | ▪ claim, |
| ▪ request for ruling or determination, | ▪ charge, |
| ▪ rule making, | ▪ accusation, |
| ▪ contract, | ▪ arrest, or |
| | ▪ judicial or other proceeding |

Particular matters do **not** include matters of general applicability such as legislation or rulemaking of general applicability and the formulation of general policies, standards or objectives.

☐ Involving a ***specific party***

The particular matter must involve specific parties both at the time the individual participated as a Government employee and at the time the former employee makes the communication or appearance, *although the parties need not be identical at both times*.

☐ The employee ***participated personally and substantially*** in the particular matter

To participate “**personally**” means to participate directly, either individually or in combination with other persons, or through direct and active supervision of the participation of any person an individual supervises. In other words, an employee

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may have participated “personally” even if they were only directing a subordinate’s involvement.

To participate “**substantially**” means that the employee’s involvement is of significance to the matter. To be “substantial” participation does not need to be determinative of the particular matter’s outcome. It may include giving advice on the particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.

A finding of substantiality is based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. The facts regarding level of involvement are critical to the analysis. Former employees should consult with their ethics official when they are unsure if their participation in a particular matter was substantial.

☐ The *United States is a party or has a direct and substantial interest*.

The United States is neither a party to nor does it have a direct and substantial interest in a particular matter merely because a Federal statute is at issue or a Federal court is serving as the forum for resolution of the matter.

Where it is unclear, the determination of whether the United States is a party to or has a direct and substantial interest in a particular matter will be made by the designated agency ethics official (DAEO) of the former employee’s agency. Factors for this determination include whether the Air Force:

- has a financial interest in the matter;
- will experience an effect on its policies, programs, or operations;
- is involved in any proceeding associated with the matter; and
- has more than an academic interest in the outcome of the matter.

ii. Two-Year Ban

Simplified Rule: For 2 years after leaving Government service, you may not represent someone else to the Government regarding particular matters that you did not work on yourself, but were pending under your responsibility during your last year of Government service.

18 U.S.C. §207(a)(2) establishes a **two-year ban** on former Federal employees knowingly, with the intent to influence, making any communication to or appearance before an employee of the United States on behalf of any other person in connection with a particular matter involving a specific party or parties, in which the United States is a party or has a direct and substantial interest, and *which such person knows or reasonably should know was actually pending under his official responsibility within the one-year period prior to the termination of his Government service*.

This two-year ban requires many of the same elements as the life-time ban. However, while the life-time ban is limited to particular matters in which you participated, the two-year ban has a broader scope, applying to all particular matters you ***know or reasonably should know were actually pending under your official responsibility within the last year of Government***

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service. This ban commences upon the date of your termination from Government service and expires two years from that date.

Therefore the two-year ban applies where the following elements are present (refer to the life-time ban section above for explanations of the first five elements):

- ☐ ***Intent to influence***
- ☐ ***Communication to or appearance before an employee of the United States*** on behalf of any other person
- ☐ Involving a ***particular matter***
- ☐ Involving a ***specific party***
- ☐ The ***United States is a party or has a direct and substantial interest***.
- ☐ Particular matter was under employee's ***"official responsibility"***

"Official responsibility" means the direct administrative or operating authority, whether intermediate or final, to approve, disapprove, or otherwise direct Government action. All particular matters are under the official responsibility of any intermediate supervisor who supervises a person, including a subordinate, who actually participates in the matter (regardless of how far down in the chain of command the subordinate is from the employee). (See: 18 U.S.C. §207(a)(2) and 5 C.F.R. 2641.202(j) "Official Responsibility")

- ☐ Particular matter was ***actually pending*** in the **last year** of Government Service.

A matter is actually pending under an employee's official responsibility if it has been referred to the employee for assignment or has been referred to or is under consideration by any person he supervises, including a subordinate. A matter is "pending" even if is not under "active" consideration and regardless of the duration of time that it is under the employee's official responsibility.

- ☐ The former employee ***has knowledge of official responsibility***.

A communication or appearance is prohibited only if, *at the time of the proposed post-employment communication or appearance*, the former employee **knows or reasonably should know** that the matter was actually pending under his official responsibility within the one-year period prior to his termination from Government service. It is **not** necessary that the employee had personal knowledge about pending matter *during his/her Government service*.

iii. One-Year Ban on Trade or Treaty Negotiation

Simplified Rule: For 1 year after leaving Government service, you may not aid, advise, or represent someone else regarding trade or treaty negotiations that you worked on during your last year of Government service.

18 U.S.C. §207(b) bars you, for **one year** after Government service ends, from knowingly *representing, aiding or advising* on the basis of *covered information*, any other person concerning any *ongoing trade or treaty negotiation* which, in the *last year* of Government service, you *participated personally and substantially*.

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As with the other bans, this restriction can be broken down into elements, all of which must be present for the one-year ban to apply.

- ☐ Former employee is *representing, aiding or advising*

Unlike the other bans the one-year ban applies even to “behind-the-scenes” assistance.

- ☐ Involving *covered information*

“**Covered information**” refers to agency records which were accessible to the employee and were exempt from disclosure under the Freedom of Information Act.

- ☐ Concerning any *ongoing trade or treaty negotiation*

For the purposes of this ban, **trade negotiations** are those undertaken pursuant to the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. §2902). **Treaties** are international agreements that require the advice and consent of the Senate.

- ☐ The employee *participated personally and substantially* in the *last year* of Government service.

Refer to the section on the life-time ban for explanations of personal and substantial participation.

C. Ethics Reviews (“30-day” Letters)

If you are a current or former employee, and you have been offered a *definite* position with a private employer, you may request a written legal opinion regarding the applicability of post-Government restrictions (including the Procurement Integrity Act) to the activities that the former Federal employee may undertake on behalf of the private employer. Ethics officials ordinarily issue these legal reviews within 30 days of the request (hence, the name “30-day letter”).

A request for a 30-day letter must be submitted on a **DD Form 2945 (see Attachment 4)**, signed and dated. The request must explain the duties the employee recently held with the Federal Government, as well as the duties the employee anticipates undertaking for the new employer. Note: Procurement/Contracting officials should reference section VI in this handout “Personnel Involved in Contracting/Procurement Activities” to determine if he or she is required to submit a request for a written ethics opinion through the AGEAR system instead of the DD Form 2945).

You are not required to have a 30-day letter in hand before you begin to **talk** to a company about employment. Generally, the Government does not require that you obtain a 30-day letter at all, unless the employee falls into one of the required categories below.

As discussed in Section VI B, 30-day letters are **required** before receiving compensation from a DoD contractor **within two years** of leaving federal employment in the case of:

- **senior employees** (General Officers and SES) who participated *personally and substantially* in an acquisition valued in excess of \$10 million; and

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- employees who dealt with a contract in an amount in excess of \$10 million while in one of the following contracting or procurement positions:
 - program manager,
 - deputy program manager,
 - procuring contracting officer,
 - administrative contracting officer,
 - source selection authority,
 - member of the source selection evaluation board, or
 - chief of a financial or technical evaluation team.

Private employers often request that a former Federal official submit a letter during the interview process concerning the applicability of post-Government employment restrictions. For these occasions, we recommend that individuals complete a **“Certificate of No Conflict” (Attachment 3)**, for submission to potential employers with a copy of your disqualification memorandum.

III. Senior Personnel (General Officers & SES)

While General Officers, SES employees and SES-equivalent employees must comply with all of the restrictions described above, they also operate under a higher degree of scrutiny and must be especially careful to avoid even the appearance of any conflict of interest. **If you are considered senior personnel, you must abide by the restrictions and requirements discussed in this Section in addition to those discussed in Section II for all Air Force employees.**

A. Pre-Separation Rules

Simplified Rule: Once you have started negotiating with a prospective employer, you may not take any official action that will affect the financial interests of that prospective employer.

Pursuant to Section 17 of the “Stop Trading on Congressional Knowledge Act” (STOCK Act)¹, all **OGE Form 278 filers** are required to submit a notification and disqualification statement to their Ethics Office **within 3 days of commencing direct negotiations, or reaching an employment agreement** with a prospective employer.

In the context of this requirement **“negotiations”** are discussions or communications with another person, or such person’s agent or intermediary that are mutually conducted with a view toward reaching an agreement regarding possible employment or compensation.

The STOCK Act requirement is **not** triggered when an employee:

- makes an unsolicited communication regarding possible employment **without receiving a response** (but once a response other than a rejection is received the STOCK Act requirement is triggered).

¹ Stop Trading on Congressional Knowledge Act (“STOCK” Act, Pub.L. 112–105, S. 2038, 126 Stat. 291, enacted April 4, 2012)

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- is negotiating employment or compensated activities to be performed **concurrent** with Federal government employment (although other authorities are applicable to such cases.)
- is negotiating future **Federal** Government employment.

A template for this mandatory STOCK Act notification and disqualification statement is provided in Attachment 2. Digital copies of the completed notification and disqualification statement **must** be submitted to your servicing Ethics Office. When in doubt as to whether you have triggered the STOCK Act requirement, seek specific guidance from your ethics counselor.

B. Post-Separation Rules

In addition to the post-employment rules described above that are applicable to all employees, two Title 18 criminal provisions apply only to “senior” or “very senior” employees.

- A “senior” employee is a Senior Executive Service (SES) civilian or general officer.
- A “very senior” employee is a person holding a position for which the rate of pay is equal to level I of the Executive Schedule and certain officials in the Office of the President. (Since “very senior” employees ***do not*** include general officers or most SES'ers, we have not included a discussion of them.)

Specifically, the two restrictions below apply to all General Officers and to those personnel whose rate of pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule. Currently, that means it applies to civilian employees (including SES, SL, ST, DISES, DISL, and some IPA's and HQE's) whose basic pay (without locality pay) is equal to or greater than \$160,111.50 (Current as of January 2016). (This applies to GS-15 civilian employees that exceed the threshold and is not limited to SES's and GO's).

i. One-Year “Cooling-off” Period

Simplified Rule: For 1 year after leaving a senior position, you may not represent someone else, with the intent to influence, before your former agency regarding any official action.

Under 18 U.S.C. §207(c) for **one year** after their service terminates, you may not knowingly make, with the *intent to influence*, any *communication or appearance* before an employee of the *agency in which they served* in the *year prior to their leaving*, if the communication or appearance is made on behalf of any other person and *official action* by the agency is sought.

The purpose of this “cooling off” period is to allow for a period of adjustment for the former senior employee and personnel at the agency served and to diminish any appearance that government decisions are being improperly influenced by the former senior employee.

This restriction does not apply to “behind-the-scenes” assistance. Additionally, it does *not* require that you were “personally and substantially” involved in the matter that is the subject of the communication or appearance. Instead, it applies to any representation back for the purpose of influencing employees at the agency that the employee just left. The one-year period begins on the date of the individual's retirement or separation, not on the day of the individual's retirement ceremony or the day he or she begins terminal leave.

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We cannot emphasize this enough: you may not communicate back to an employee of the agency you left, for the purposes of influencing that agency, for one calendar year after you retire or separate from your Air Force position. If you do, you are subject to criminal prosecution.

For most Air Force employees, the term “agency” refers to employees of the Air Force, not the Department of Defense, not the other military services, and not other Federal agencies. However, if the officer leaves a job that is “dual-hatted,” such as a Unified or Joint Command position that has both Air Force and DoD responsibilities, then the one-year bar applies to *both* agencies (USAF and DoD), with some exceptions. (Note: For the purposes of this example, DoD would include any components not separately designated. The Military Departments, DISA, DLA, NGA, NRO, DTRA and NSA have been separately designated.)

ii. One-Year Ban on Aiding or Advising a Foreign Government

For **one year** after service terminates, you may not *represent, aid or advise a foreign government or foreign political party with the intent to influence* the decision of an employee of *any department or agency* of the United States. (18 U.S.C. §207(f)). This prohibition covers all activities with foreign government *including* “behind-the-scenes” assistance, such as drafting a proposal, advising on another’s appearance, or consulting on strategies.

iii. Termination OGE 278 – Public Financial Disclosure Report

If you are a senior official who are leaving government service, you must file a termination OGE 278 report **no later than 30 days** after termination and no earlier than the last day of service. The last day of service is the day before your retirement, not the last day before you take terminal leave. In general, a termination report would cover January 1 through the last day of service.

As annual OGE 278 reports are due on May 15 every year, if the last day of service falls before August 14, the servicing ethics counselor may be able to grant an appropriate extension to allow for the filing a combination annual/termination report. A combination annual/termination report would cover the previous calendar year through the last day of service.

Where to file:

The Termination OGE Form 278 should be filed with the employee’s servicing legal office. For Air Force personnel assigned to the Air Staff or Secretariat, the form should be forwarded to: The Air Force Ethics Office, SAF/GCA, Room 4C934, The Pentagon, Washington, DC 20330-1740, (703) 693-0417.

Failure to file this form by the deadline may result in a \$200.00 late filing fee. In addition, if you knowingly and willfully fail to file this report, we must refer your name to the Attorney General, who may pursue prosecution in U.S. District Court and subject you to a civil penalty up to \$50,000.

IV. Non-Career Political Appointees

The following restrictions apply to non-career political appointees who are subject to the ethics pledge established by Executive Order 13490.

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A. Two-Year “Cooling off” Period

Simplified Rule: For 2 years after leaving Government service, you may not represent someone else to the Government regarding particular matters that you did not work on yourself, but were pending under your responsibility during your last year of Government service.

If you are a senior appointee who has signed the Pledge, and you are members of the Senior Executive Service, the “cooling off” period is applicable to you for **two years**. Specifically, paragraph 4 of the Pledge states that once you leaves Federal service as a senior official, you may not communicate or meet with, or otherwise represent another entity to an employee of his/her former *agency* for **two years**. This Pledge restriction constitutes a one-year extension of the standard “cooling off” period under 18 U.S.C. §207(c) (discussed in section III B.(i), above).

For *Presidential appointees* confirmed with the advice and consent of the Senate (PAS), “former agency” refers to **all of DoD** including each Military Department and DoD Agency.

B. Appointees Leaving Government to Lobby

If you have signed the Pledge you have agreed not to **lobby** any **covered executive branch official** or non-career Senior Executive Service appointee for the remainder of the Administration.

“Lobbying a Covered Executive Branch Official” means:

Contacting a Covered Executive Branch Official on behalf of a client (as a registered lobbyist) regarding:

- the formulation, modification, or adoption of Federal legislation, rules, regulations, Executive orders or any other federal program policy or position;
- the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or
- the nomination or confirmation of a person for a position subject to confirmation by the Senate.

“Covered Executive Branch Official” means:

- the President;
- the Vice President;
- individuals serving in the Executive Office of the President;
- any officer or employee serving in level I, II, III, IV, or V of the Executive Schedule, as designated by statute or Executive order;
- military members grade 0-7 or above; and
- individuals serving in confidential, policy-determining, policy-making, or policy-advocating positions.

Pre- & Post-Employment Restrictions for Separating & Retiring Air Force Personnel

V. Retired Military Members

A. Military Retirees Working for DoD

To avoid the appearance of favoritism or preferential treatment, retired military members may not be selected to fill a DoD civil service positions (including non-appropriated fund instrumentalities) within 180 days following retirement unless one of three exceptions exists:

- the appointment is authorized by the head of a DoD Component, or designee;
- the minimum rate of basic pay for the position has been increased under 5 U.S.C. §5305; or
- a state of national emergency exists.

This restriction is currently waived due to the “state of national emergency” exception which was renewed in 2015. Please note that it is fairly common for one of the exceptions above to apply -- thus the 180-day waiting period is seldom applied. For further information, *see* 5 U.S.C. §3326, JER 9-600, and DoDI 1402.1.

B. Military Retirees Working for a Foreign Government

Simplified Rule: If you are a military retiree, you must obtain pre-approval for employment with a foreign government. Unless you receive prior authorization from your Service Secretary and the Secretary of State, you may forfeit your military pay during the time you perform services for a foreign government.

Under the Emoluments Clause of the U.S. Constitution retired military officers, enlisted personnel, and Reservists may not accept a payment from a foreign government without first obtaining the consent of Congress. Congress has determined that this consent should be obtained by asking for advance permission from the Secretary of State and the Secretary of the Military Department concerned before accepting the payment. For purposes of the Emoluments Clause, a corporation or university that is controlled by a foreign government is generally considered to be the same as the foreign government itself.

The requirements of the Emoluments Clause apply not only to payments that are received directly by you from the foreign government, but also to payments made to you via an equitable distribution of partner or limited liability company profits that come from foreign government payments. This is true even if the retired military member who is receiving a share of the profits did not work directly for the foreign government or on the foreign government matter. In these instances, before the retired military member accepts such a payment, he or she must seek consent from his or her Service and from the Secretary of State. The penalty for violating the Emoluments Clause is suspension of a portion of (or in some instances all) retired military pay during the period of the violation.

AF Retirees considering employment by a foreign government should consult AFI 36-2913, *Request for Approval of Foreign Government Employment* (19 Nov 03). The responsible office is:

HQ AFPC/DPFFF, 550 C Street West, Randolph AFB, Texas, 78150-4739.

Point of Contact: Ms. Tammy Hern
COM 210-565-2273 DSN 665-2273

Pre- & Post-Employment Restrictions for Separating & Retiring Air Force Personnel

VI. Personnel Involved in Contracting/Procurement Activities

A. Procurement Integrity Act Restrictions

If you are a military or civilian employee who works with contracts and procurement, or make key decisions in this area, you must be aware of special pre- and post-separation restrictions arising from certain provisions of a Federal law commonly known as the **Procurement Integrity Act (PIA)**, now codified at 41 U.S.C. §§ 2101-07. The Act is implemented through the Federal Acquisition Regulation (FAR), Part 3.104.

The Act has four basic provisions which will be discussed in turn below:

- (i) a ban on disclosing procurement information;
- (ii) a ban on obtaining procurement information;
- (iii) a requirement for contracting officials to report employment contacts by/with a bidder or offeror in the procurement; and
- (iv) a one year ban for certain personnel on accepting compensation from certain contractors.

i. Disclosing Procurement Information

The Act prohibits the disclosure of “*contractor bid or proposal information*” and “*source selection information*.” These terms are defined in the Act. The ban applies until the contract is awarded.

The ban applies to:

- current Federal employees;
- former Federal employees;
- individuals (such as contractor employees) who are currently advising the Government regarding the procurement; and
- individuals who have advised the Government regarding the procurement, but are no longer doing so.

ii. Obtaining Procurement Information

All Federal employees and contractor personnel are prohibited from knowingly obtaining:

- “*contractor bid or proposal information*” or
- “*source selection information*” before the award of the contract to which such information relates, other than as provided for by law.

iii. Employment Contact Reporting Rule

This rule applies only to contracts in excess of the simplified acquisition threshold, which is generally \$150,000 (FAR 2.101). If an employee who is participating personally and substantially in a procurement makes contacts with, or is contacted by, a bidder or offeror in that procurement regarding possible non-Federal employment, the employee must:

Pre- & Post-Employment Restrictions for Separating & Retiring Air Force Personnel

- Promptly report the contact in writing to the employee's supervisor and to the designated agency ethics official (or designee), and
- Either:
 - Reject the possibility of employment, or
 - Disqualify himself or herself from further personal and substantial participation in the procurement until the agency has authorized the employee to resume participation in the procurement on the grounds that:
 - the company that the employment contact was with is no longer a bidder or offeror in the procurement, or
 - all discussions between the employee and the company regarding possible employment have terminated without an agreement or arrangement for employment.

iv. One-Year Compensation Ban

The one-year compensation ban applies to you if you serve in any of the following positions on a contract over \$10 million at the time the contractor is selected or the contract is awarded:

- Procuring Contracting Officer (PCO)
 - Source Selection Authority (SSA)
 - Source Selection Evaluation Board or Team
 - Chief of a financial or technical evaluation team
 - Program Manager
 - Deputy Program Manager
 - Administrative Contracting Officer
- The one-year compensation ban applies to you if you personally make any of the following types of decisions:
 - to award a contract or a subcontract over \$10 million.
 - to award a modification of a contract or a subcontract over \$10 million.
 - to award a task order or delivery order over \$10 million.
 - to establish overhead or other rates applicable to a contract or contracts that are valued over \$10 million.
 - to approve issuance of a contract payment or payments over \$10 million.
 - to pay or settle a contract claim over \$10 million.

The one-year compensation ban applies to officers, enlisted personnel, civilian employees, and special government employee who fit the above criteria regardless of whether one retires, resigns or separates from the Government. The ban can apply in connection with both competitively awarded contracts and non-competitively awarded (i.e. sole source) contracts. The 1-year ban applies to accepting compensation as an employee, officer, director or consultant of the contractor.

The ban does not apply to accepting compensation from any division or affiliate of a contractor that does not produce "the same or similar products or services" as the entity of the contractor that is responsible for the contract you were involved in (such as a commercial division of the contractor).

Pre- & Post-Employment Restrictions for Separating & Retiring Air Force Personnel

The term “*affiliate*” means an associated business concern or individual if, directly or indirectly, either (a) one controls or can control the other, or (b) a third party controls or can control both.

“*Compensation*” means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly, for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

B. 30-day Letter Requirement

You must submit a written request to their ethics counselor for post-Government employment advice if you expect to receive compensation from any DoD contractor within the two-year period from the date you left government service if you were a senior employee who participated personally and substantially in an acquisition valued in excess of \$10 million, OR if you currently serve, or when you left government service, served in one of the following positions: program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract in excess of \$10,000,000.

These requests must be submitted online through the After Government Employment Repository (AGEAR) via the AGEAR Requestor’s Page at:

<https://www.fdm.army.mil/AGEARWeb/requestor/landingReq.xhtml>.

Reminder: Submitting a 30 day letter request through AGEAR is required only for certain procurement/contracting officials described above. All other 30 day letter requests should be submitted through DD Form 2945. If you are unsure as to whether you must submit a request through AGEAR or through DD Form 2945, please contact your local ethics office.

VII. Conclusion

Whether you are separating or retiring, your awareness of the pre-and post-Government employment restrictions should help you to avoid any misunderstanding of the law. If you have any questions, please contact the appropriate legal office (listed in the Introduction Section) for further guidance from an ethics counselor. Good luck with your future endeavors!

ATTACHMENT 1

Template Disqualification Statement for ALL Employees Seeking Post-Government Employment

Under 5 C.F.R. §2635.604 employees must disqualify themselves from particular matters that will have direct and predictable effects on the financial interests of prospective employers. Comparable restrictions are placed on uniformed personnel under JER paragraph 8-200.

When Disqualification is Required:

The disqualification requirement is triggered when an employee begins seeking employment. **Seeking employment** includes:

- **Conducting mutual negotiation discussions or communications** with a view toward reaching an agreement regarding possible employment regardless of whether or not specific terms and conditions of employment are discussed;
- **Making unsolicited communications regarding possible employment**, including sending a resume (but merely requesting a job application does not require disqualification unless a job application is submitted); and
- **Receiving an unsolicited communication regarding possible employment without rejecting it.**

Requirements of Disqualification:

- **Written notice** of disqualification must be made to a DoD employee's **supervisor** under paragraph 2-204(c) of the JER. **The proper completion and filing of the below Template Disqualification Statement will fulfill this JER requirement.**
- An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified.
- Appropriate oral or written notification of the employee's disqualification may be made to support staff by the employee to ensure that the employee is not involved in a matter from which he is disqualified.
- **Employees subject to ethics agreements** must cc their completed Disqualification Statement to the Office of Government Ethics where proof of recusal is required as evidence of compliance with an ethics agreement under 5 C.F.R. 2634.804.

ATTENTION: Public financial disclosure filers are subject to the STOCK Act and must also file a Notification and Recusal Statement within 3 days of the commencement of the negotiation or agreement of future employment or compensation with a non-Federal entity.

See below for more details and a template Notification and Recusal Statement.

[Date]

MEMORANDUM FOR [insert supervisor name and organization]

FROM: [insert name and title]

SUBJECT: Disqualification Statement (Seeking Post-Government Employment)

Consistent with 18 U.S.C. § 208 (a criminal statute), and 5 C.F.R. §§ 2635.604 and 606, I am notifying you that I am seeking post-Government employment with the following non-Federal [entity/entities]: _____

To avoid a conflict of interest or the appearance of a conflict of interest, I am disqualifying myself from participating personally and substantially in any particular matter that would have a direct and predictable effect on the financial interests of the above [entity/entities]. This means that I will not decide, recommend, approve, disapprove, investigate, advise, or otherwise contribute to official matters impacting the above [entity/entities].

Any matter concerning these persons or companies that I would normally be assigned in course of my duties will be referred by support staff to [insert name(s) of person(s) who will review these matters] for appropriate action. This person will not be under my supervision for these matters.

This disqualification remains in effect until further notice. In the event circumstances change, such as if I reject the possibility of employment with one of the listed entities, or if I receive no response two months after submitting my resume, I will consult an ethics counselor, update this memorandum, and notify all relevant parties.

Signature

Date

[Print Name]

cc: [Support staff that would need to be informed of disqualifications to effectively divert assignments involving the above entities]

ATTACHMENT 2

Template Notification and Recusal Statement Only for STOCK Act Employees Negotiating Post-Government Employment

Under the STOCK Act public financial disclosure filers are **required** to file a notice and recusal statement with their supervising ethics office **within 3 days** of commencing negotiations for post-Government employment. The proper completion and dissemination of the below form will fulfill this STOCK Act requirement.

Who is subject to this requirement:

All public financial disclosure filers (OGE 278e form) are subject to this STOCK Act requirement, including:

- Uniformed service personnel whose pay grade is at or above O-7.
- Any civilian employee who:
 - occupies a position classified above GS-15 of the General Schedule.
 - receives a rate of basic pay that is equal to or greater than 120 percent of the minimum rate of basic pay for GS-15 of the General Schedule.
 - holds a commission of appointment from the President.
- Any officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification to those above.

This is not an exhaustive list of personnel covered by the STOCK Act. If you are unsure of whether or not you are covered by the STOCK Act, consult with your ethics official.

When STOCK Act Notice and Recusal is triggered:

The STOCK Act requires notice to an employee's supervising ethics office **within 3 days** of:

- **commencing direct negotiations**, or
- **reaching an employment agreement** with a prospective employer.

Negotiations are discussions or communications with another person, or such person's agent or intermediary that are **mutually conducted** with a view toward reaching an agreement regarding possible employment or compensation.

The STOCK Act Notice and Recusal requirement is not triggered when an employee:

- makes an unsolicited communication regarding possible employment **without receiving a response** (but once a response other than a rejection is received the STOCK Act requirement is triggered).
- is negotiating employment or compensated activities to be performed **concurrent** with federal government employment (although other authorities are applicable to such cases.)
- is negotiating future **Federal** Government employment.

NOTIFICATION OF POST-EMPLOYMENT NEGOTIATION OR AGREEMENT AND RECUSAL STATEMENT

Section 17 of the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) requires certain employees to file a statement notifying their agency ethics official of any negotiation for or agreement of future employment or compensation with a non-federal entity within **three business days** after commencement of the negotiation or agreement. An employee who files a notification statement also must file with the agency's ethics official a recusal statement whenever there is a conflict of interest or appearance of a conflict of interest with the entity unless the employee obtains a written waiver as discussed in 5 C.F.R. § 2635.402(d), obtains an authorization as discussed in 5 C.F.R. § 2635.502(d), or qualifies for a regulatory exemption pursuant to 18 U.S.C. § 208(b)(2).

NOTIFICATION OF POST-GOVERNMENT EMPLOYMENT OR COMPENSATION NEGOTIATION OR AGREEMENT

Name of Employee	
Agency/Office	
Date Negotiation or Agreement Commenced	
Name(s) of Non-Federal Entity or Entities Disclose each non-federal entity with which you are negotiating for or have an agreement of future employment or compensation.	

RECUSAL STATEMENT

For as long as I am negotiating for or have an agreement of employment or compensation with any entity listed above, I will comply with all applicable recusal obligations under 5 C.F.R. part 2635 and, where applicable, 18 U.S.C. § 208. I understand that it is my responsibility to consult an agency ethics official if I have questions regarding these recusal obligations.

Employee Signature	Date Submitted
Agency Ethics Official Signature	Date Received

ATTACHMENT 3

FEDERAL GOVERNMENT EMPLOYEE CERTIFICATE OF NO CONFLICT

Your Name
Your Organization
Your Address
City, State ZIP

Company Name
Company Address
City, State ZIP

I certify that:

- 1) I have been involved in a pending federal agency procurement in which ***Company Name*** is or was an offeror or bidder
☐ **YES** ☐ **NO**
 - If **YES**:
 - i. Identify the matter by name and/or contract number:
 - ii. Provide dates of such involvement:
- 2) I have been involved in a contract or other particular matter which may have a direct and predictable effect on the financial interests of ***Company Name***.
☐ **YES** ☐ **NO**
 - If **YES**:
 - i. Identify the matter by name and/or contract number(s):
 - ii. Provide dates of such involvement
- 3) If I have answered **YES** to either of the above questions, the highest dollar value of any matter I have been involved in within the past twelve months is:
☐ **OVER \$10 Million** ☐ **\$10 Million or UNDER** ☐ **N/A**

I have provided notification and disqualified myself from any future participation in any federal agency procurement in which ***Company Name*** is or may be an offeror or bidder, and from future participation in any contract or other particular matter which may have a direct and predictable effect on the financial interests of ***Company Name***.

This certification includes all subsidiaries and business units of ***Company Name***.

A copy of my written disqualification letter is attached to this certification.

Signature: _____

ATTACHMENT 4

DD Form 2945 ***Post-Government Employment Advice Opinion Request***

Current and former Federal employees who have been offered new employment may request a written legal opinion on whether the Procurement Integrity Act applies to them. (A PDF fillable copy of DD Form 2945 is available at the following website: <http://www.dtic.mil/whs/directives/forms/eforms/dd2945.pdf>). An ethics counselor ordinarily issues this legal opinion within 30 days of receiving the request (hence the nickname, “30-day letter”).

If you expect to receive compensation from a defense contractor and you either: 1) are on the Executive Schedule, a member of the Senior Executive Service, or a general or flag officer, AND participated personally and substantially in an acquisition valued in excess of \$10,000,000; OR 2) currently serve or served in one of the positions listed on page 17 of this handout, you **MUST** submit your request (online using AGEAR – as outlined on page 12) to your ethics counselor for a written advisory opinion.

The employee seeking the advice must have a definite job description and job offer that is contingent upon an ethics review. If an employer asks for a 30-day letter prior to offering a definite position and will not accept the self-certification found at Attachment 2 of this document, give them a copy of this information sheet. If they have further questions, they should call the relevant legal office, below. The request for a letter is submitted on the DD Form 2945, which must be signed and dated. The worksheet must include a clear description of the duties the employee recently held with the Federal government, as well as a description of the duties required by the new employer.

Employees are not required to have a 30-day letter before they talk to a potential employer about private employment. However, it is not unusual for the private employer to request that a former Federal official obtain a letter because it documents that an ethics review was done.

Please keep in mind that Air Force ethics counselors represent the United States Air Force—they do not represent the employee. Also, counseling on standards of conduct issues is not “legal assistance.” This means that the normal confidentiality afforded a person who consults with an attorney does *not* apply to discussions on pre- and post-employment restrictions. Finally, any advice given in this area is personal to the employee asking the questions; it is not provided to third parties or to potential employers directly.

If you would like one-on-one counseling, it is important to contact the appropriate ethics counselor.

- For Air Force personnel assigned to the Air Staff or Secretariat, contact: SAF/GCA
Room 4C934, The Pentagon, Washington, DC 20330-1740
(703) 693-0417
- For Air Force personnel assigned to AFDW, contact: AFDW/JA
1500 W. Perimeter Road, Suite 5770
Joint Base Andrews, MD 20762
(240) 612-6091 / DSN 612-6091
- For Air Force personnel assigned to the 11th Wing, contact: 11WG/JA
1500 W. Perimeter Road, Suite 2110
Joint Base Andrews, MD 20762
(240) 612-5750 / DSN 612-5752

For Air Force personnel assigned to other USAF, DoD or Federal organizations: contact the servicing ethics counselor or staff judge advocate/legal counsel for the organization to which you are assigned.